

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RALPH B. CIUFFETELLI,

Case No.

Plaintiff,

VERIFIED COMPLAINT

- against -

JURY TRIAL DEMANDED

FARM CREDIT EAST, ACA, PATRICK K. WILES,
and SANDRA M. PEARSON,

Defendants.
-----X

Plaintiff RALPH B. CIUFFETELLI (hereinafter "Plaintiff"), as and for his complaint against FARM CREDIT EAST, ACA (hereinafter "Defendant Farm Credit East"), PATRICK K. WILES (hereinafter "Defendant Wiles"), and SANDRA M. PEARSON (hereinafter "Defendant Pearson") (collectively the "Defendants") respectfully alleges as follows:

I.

PRELIMINARY STATEMENT

1. This action arises out of the age discrimination of and animus towards the Plaintiff who was denied four (4) times for financing from Defendant Farm Credit East despite his multimillion dollar estimated net worth, perfect credit score, and extensive credit history. Each and every denial was for "insufficient income" or lack of farming experience and/or a business plan, all of which were a pretext. This action also seeks to declare that Defendant Farm Credit East is subject to the Freedom of Information Act ("FOIA") and that Defendant Farm Credit East must disclose the information sought by the Plaintiff, including information pertaining to his own applications and that of other applicants who were approved for loans despite, upon information and belief, not having the same qualifications.

II.

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 28 U.S.C. §1331 because the causes of action arise under the laws of the United States. The Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§ 2201, 2201(a) and 2202 and actual damages, punitive damages, costs and attorneys' fees pursuant to The Equal Credit Opportunity Act "ECOA," 15 U.S.C. § 1691.

3. The supplemental jurisdiction of the District Court is invoked pursuant to 28 U.S.C. §1367 for an inter-related state claim which arises from the occurrences giving rise to the federal claim and which has a common nucleus of operative fact.

4. Venue is proper in the Eastern District of New York, pursuant to 28 U.S.C. §1391(a), because a substantial part of the events or omissions giving rise to the claims occurred in Suffolk County, New York.

III.

THE PARTIES

5. Plaintiff was, during the initial application process with Defendant Farm Credit East, a resident of the County of Westchester in the State of New York, specifically residing at 70 Birchbrook Road, Bronxville, New York 10708, but became a resident the County of Suffolk in the State of New York, specifically at the property at issue in this case located at 2822 River Road, Calverton, New York (hereinafter the "Property").

6. Upon information and belief, Defendant Farm Credit East is an entity within the Farm Credit System, disburses funds under the Federal Farm Loan Act, and is subject to the authority of, and within the jurisdiction of, the Farm Credit Administration.

7. Upon information and belief, Defendant Farm Credit East maintains its principal place of business and/or headquarters at 240 South Road, Enfield, Connecticut 06082. It also maintains a Riverhead office and/or branch at 1281 Route 58, Riverhead, New York 11901.

8. Upon information and belief, Defendant Wiles was, at all relevant times, a senior loan officer at Farm Credit East at Farm Credit East's Riverhead office.

9. Upon information and belief, Defendant Sandra M. Pearson was, at all relevant times, a mortgage specialist at Defendant Farm Credit East serving Massachusetts, Connecticut, and Long Island, New York.

IV.

GENESIS OF THIS ACTION

10. In 2016, the Plaintiff, a seventy-three year old man at the time, was interested in purchasing a country estate in Calverton, New York.

11. The estate consisted of a country home, a vineyard, and a licensed winery. It also had potential for an equestrian facility, nursery, as well as, building rights for recreational facilities/tourism/hotel as of right.

12. The estate had sustained major water damage and was undergoing repairs. The sellers wanted to conduct the repairs before signing a contract with the Plaintiff.

13. While the repairs were being conducted, the Plaintiff began to explore his options for obtaining a mortgage. The Plaintiff, at all relevant times, had an extensive credit history and a perfect credit score.

14. The Plaintiff sought the advice of a member of the rotary club to whom he belonged as to where to obtain a mortgage. This friend told him to inquire in the Farm Bureau in the Suffolk

County offices building located at 423 Griffing Avenue, Riverhead, New York 11901.

15. The Chief of the Farm Bureau, Kim Krupski, advised the Plaintiff that the Farm Bureau could only lend up to \$500,000.00. This would not be enough to secure the transaction, because the property at issue was worth over \$1,000,000.00. She advised that he contact Defendant Farm Credit East.

16. The Plaintiff also spoke with a representative from the aquaculture and fish farming department, Corey Humphries, within the same building about his aquaculture plans for the property. Mr. Humphries was so impressed with the Plaintiff's plans that he exclaimed, "You don't know how long I have been waiting for someone like you."

17. Upon the recommendation of the Chief of the Farm Bureau, the Plaintiff, on November 14, 2016, inquired with Defendant Farm Credit East in person at their Riverhead office.

18. The Plaintiff met with Kristin Kraszewski (hereinafter "Kristin"), a credit representative at Defendant Farm Credit East.

19. Kristin explained the Farm Credit East mortgage process, provided the Plaintiff with the current mortgage rates and terms, and assured the Plaintiff that he should have no issues obtaining a mortgage based upon his creditworthiness. The terms included an interest rate under four (4) percent annually, with one (1) point back annually after a period of timely payments.

20. In February of 2017, the Plaintiff signed a contract for the property, which was located at 2822 River Road, Calverton, New York (the "Property") with Lisa DiBernardi, executrix of the Estate of Peter DiBernardi. The purchase price was \$1,200,000.00, including closing costs.

21. Time was of the essence, with only forty-five days to close, so the Plaintiff went to his bank, Capital One Bank, for a mortgage. The Plaintiff was quickly approved.

22. However, the Plaintiff received a sudden phone call from his representative at Capital One Bank informing him that Capital One Bank could not issue the mortgage, because Capital One Bank does not have a farm program and the Property was in an agricultural district.

23. This was the first time that the Plaintiff learned that the Property was in an agricultural district. Unsure of what that meant for lending purposes, the Plaintiff went to Chase Bank and Bridgehampton National Bank. Both of these banks gave the Plaintiff the same response, specifically that these banks could not lend to the Plaintiff because the Property was in an agricultural district and they did not have farm programs.

24. In fact, upon information and belief, Defendant Farm Credit East was the only option to obtain a mortgage for the Property. No other consumer banking institution would be able to issue the mortgage. Bridgehampton National Bank actually referred the Plaintiff to Defendant Farm Credit East.

25. With limited time, the Plaintiff, with the assistance of his representative at Capital One Bank, acquired a very costly bridge loan at Patch of Land LLC for five hundred and fifty thousand dollars (\$550,000.00) and contributed the balance, over half a million dollars, using his own cash. The terms of the bridge loan were nine (9) and one half ($\frac{1}{2}$) percent interest, for one (1) year, four and one half ($4\frac{1}{2}$) points in fees, with an eighteen (18) percent late payment fee.

26. The closing took place on May 12, 2017.

27. The Plaintiff immediately thereafter went back to see Kristin in order to refinance the Property.

28. The Plaintiff provided the address and Kristin explained that she knew the property well and that Defendant Farm Credit East had actually appraised the property a few years before

for more than the Plaintiff's purchase price. Plaintiff filled out an application and submitted it with Kristin.

29. Once again, the Plaintiff was assured that there should be no barriers to obtaining a mortgage from Defendant Farm Credit East. In fact, the conversation went so well that the Plaintiff and Bobby, an in-house appraiser for Defendant Farm Credit East, decided to meet up for lunch.

30. An appraisal of the Property was scheduled for June 21, 2017.

31. The day before the appraisal, the Plaintiff received a phone call from Defendant Wiles. The Plaintiff had never met or spoken with Defendant Wiles before.

32. During this phone call, Defendant Wiles cancelled the appraisal without any explanation other than that he did not want the Plaintiff to waste his money on an appraisal.

33. By letter dated the next day and for the very first time, Kristin, referring therein to the Plaintiff's phone call with Defendant Wiles, demanded that the Plaintiff respond to a list of extensive financial information "in order to further consider [Plaintiff's] request." A true copy of this letter is annexed as **Exhibit "A."**

34. In response, the Plaintiff supplied the requested information, including a statement of estimated twelve million dollar net worth, a letter from his accountant, and proof of funds in his bank account.

35. On or about July 19, 2017, Defendant Farm Credit East issued a "Statement of Credit Denial, Adverse Decision Withdrawal or Change" denying Plaintiff's application for a mortgage stating, as the principal reasons for the adverse action, "Other," explaining therein that the Plaintiff had "inadequate annual income to provide for required Debt service" and "Start-up

nature of farm operation with no historic earnings track record." A true copy of this denial is annexed hereto as **Exhibit "B."**

36. The denial was signed by Defendant Wiles.

37. Not only did the Plaintiff provide adequate proof of income, Defendant Wiles never asked about the Plaintiff's farming experience before issuing the denial. If he had asked, the Plaintiff would have provided proof of his farming experience.

38. As a result of the denial, the Plaintiff was forced to maintain his very costly bridge loan and forgo other investment opportunities.

39. Shortly thereafter the Plaintiff went to speak with Defendant Wiles about the denial in person.

40. During their meeting, the Plaintiff explained his income and experience with farming.

41. The Plaintiff voluntarily presented proof, with pictures, of his 23.5 acre ground cover farm in Yorktown and Defendant Wiles stated, "Why didn't you tell me about this earlier?" The Plaintiff told Defendant Wiles that he never asked.

42. The Plaintiff told Defendant Wiles about his fifteen year payment history with direct ACH debit and no late payments to which Defendant Wiles stated, "oh."

43. Plaintiff also pointed to Defendant Wiles' own paperwork to show him that Plaintiff already provided proof of funds and further explained that he had been making monthly payments of over \$4,000.00 a month on the bridge loan, which was proof of his reliability as a borrower.

44. It was as if Defendant Wiles never looked at his file.

45. Defendant Wiles, however, asked the Plaintiff questions such as, "How old are

you?" "What if you die?" "Is the property in your name?"

46. Upon conclusion of their conversation, Defendant Wiles asked the Plaintiff if he wanted him to reconsider his application as a refinance, indicating that Defendant Wiles had not even realized that the Plaintiff owned the Property and was already making timely hefty payments on the bridge loan – more proof of his borrowing reliability. Plaintiff, of course, said that he did.

47. Around or about the same time, Defendant Wiles contacted the Plaintiff's daughter and asked her if she was involved in the Property and what would happen in the event of "succession."

48. The Plaintiff's daughter informed Defendant Wiles that she was not involved with the Property and that he should direct his questions to the Plaintiff.

49. On or about November 30, 2017, the Plaintiff wrote a letter to Defendant Wiles confirming the terms available to refinance the Property. A copy of the Plaintiff's November 30, 2017 letter to Defendant Wiles is annexed hereto as **Exhibit "C."**

50. In response, Defendant Wiles wrote the Plaintiff a letter, dated December 6, 2017, stating that "Farm Credit East's has [sic] previous denial with respect to the property located at 2822 River Road, Calverton, New York still stands," enclosing a copy therewith. A copy of Defendant Wiles' December 6, 2017 letter is annexed hereto as **Exhibit "D."**

51. Thereafter, the Plaintiff read an advertisement for Defendant Farm Credit East's Country Home Mortgage program.

52. The estate that the Plaintiff purchased was a country home, so he contacted Defendant Pearson, the mortgage specialist for the program, for information.

53. After discussing the program, the Plaintiff asked Defendant Pearson for an

application. He explained that he does not use e-mail, so he asked if she could mail him one to Ciuffetelli Group, 656 Yonkers Avenue, 2nd Floor, Yonkers, New York 11704. She told him that she would do so right away.

54. Defendant Pearson never mailed the Plaintiff an application.

55. Upon information and belief, Defendant Wiles learned that the Plaintiff was trying to apply for a country home mortgage and told Defendant Pearson not to send him an application and she acquiesced.

56. When the Plaintiff again contacted Defendant Pearson about applying for a country home mortgage he was told he could now only apply online – a problem for someone like the Plaintiff who does not regularly use e-mail or the Internet.

57. The Plaintiff decided to retain an attorney to assist him in applying for the country home mortgage.

58. In February of 2018, despite his attorney's involvement, the Plaintiff's application from a country home loan was denied. However, there was no formal writing denying the application.

59. Plaintiff and his attorney submitted additional information until early April in an attempt to prove to Defendant Farm Credit East that the denial was erroneous.

60. However, on or about April 27, 2018, a copy of which is annexed hereto as **Exhibit "E,"** Defendant Farm Credit East formalized its February 8, 2018 denial "as further supplemented on 4/3/2018," once again selecting "Other," and specifying, "We do not grant credit to any applicant on the terms and conditions you requested" and "Farm Credit East, ACA ("FCE") is denying your loan request as there is insufficient income to service debt and, further, you have not

provided sufficient information with respect to use of funds and an acceptable business plan."

61. This denial was signed by Defendant Pearson.

62. After the denial, the Plaintiff and his attorney attempted to further discuss the denial with Defendant Farm Credit East and Defendant Farm Credit East referred the matter to their counsel.

63. General Counsel for Farm Credit East, Alena C. Gfeller, Esq., was very clear that the Plaintiff would never obtain financing from Defendant Farm Credit East.

64. In fact, on May 6, 2018, Ms. Gfeller stated *via* e-mail, a copy of which is annexed as **Exhibit "F":**

As for your suggestion that a new application be opened, please understand that this would be the third application for financing by Mr. Ciuffetelli. To date, Farm Credit East has been unable to extend financing and has issued 2 denial letters. *We are respectfully declining any further requests to extend credit to Mr. Ciuffetelli with respect to the property located at 2822 River Road. (emphasis added).*

65. Ms. Gfeller's e-mail serves as documentary evidence of Defendant Farm Credit East's animus towards the Plaintiff. It simply did not matter how qualified the Plaintiff was, because Defendant Farm Credit East was going to deny any application for financing that he made.

66. Frustrated, the Plaintiff began to ask people he knew about their experiences with Defendant Farm Credit East.

67. The Plaintiff learned from one individual, Erik Kirk, that there was no place easier to acquire a loan from than Farm Credit East. This individual explained that he did not have "two pennies to rub together," but Farm Credit East lent him money. Mr. Kirk also told the Plaintiff that Defendant Farm Credit East would include depreciation as income. Another individual,

Kenneth Balatto, obtained financing from Farm Credit East for his car wash/auto repair shop – which is odd considering Farm Credit East makes loans specifically for farming. Another individual, Tom DiChiaro, of the winery at St. George, in Yorktown, Route 6, obtained financing with his father co-signing.

68. The Plaintiff, by and through his current counsel, sent Defendant Farm Credit East a Freedom of Information Act ("FOIA") request for more information about these particular applicants and others, but Defendant Farm Credit East stated it was not subject to FOIA. A copy of the Plaintiff's FOIA request is annexed hereto as **Exhibit "G."**

69. The denial for the Plaintiff's FOIA request, signed by Ms. Gfeller who cc'd Defendant Wiles, specifically stated, a copy of which is annexed hereto as **Exhibit "H:"**

FCE is an instrumentality of the United States and governed by the regulations of the Farm Credit Administration ("FCA"); however, FCE is not a federal agency who may be the subject to a Freedom of Information Act request. In fact, the FCA Regulations at 12 CFR Section 618.8320 prohibit FCE from producing confidential borrower documents unless a court of competent jurisdiction issues a lawful order signed by a judge.

70. When the Plaintiff, by and through his current counsel, sent the FOIA request directly to the Farm Credit Administration ("FCA"), senior attorney Autumn R. Agans, Esq., responded, in relevant part: "After conducting a thorough search of Agency records, we have determined that FCA has no records responsive to your request. However, you may be able to obtain the requested records from Farm Credit East." A copy of this e-mail is annexed hereto as **Exhibit "I."**

71. When Plaintiff's counsel informed Ms. Agans of Farm Credit East's position, Ms. Agans refused to state whether or not Farm Credit East was subject to FOIA. A copy of this e-

mail exchange is annexed hereto as **Exhibit "J."**

72. Due to the above, the Plaintiff was unable to finance other investments, including a residential rental income project valued at over One Hundred Million Dollars (\$100,000,000.000).

V.

CLAIMS FOR RELIEF

AS AND FOR A FIRST CLAIM

**(AGE DISCRIMINATION UNDER THE EQUAL CREDIT OPPORTUNITY ACT
"ECOA", 15 U.S.C. § 1691, AGAINST ALL DEFENDANTS)**

73. Plaintiff repeats and reiterates the allegations set forth within paragraphs "1" through "72" herein above, with the same force and effect as if fully set forth at length herein.

74. "The ECOA prohibits discrimination in the extension of credit and provides that 'it shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction — (1) on the basis of race, color, religion, national origin, sex, or marital status, or age[.]' " Hirschfeld v. Metlife Bank, N.A., 2012 U.S. Dist. LEXIS 110244, at *16-17 (E.D.N.Y. July 31, 2012, No. 11-CV-3450 (ARR) (MDG) (quoting 15 U.S.C. §1691(a)).

75. "The ECOA defines a creditor as 'any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.' " Id. (quoting 15 U.S.C. §1691a(e)).

76. The term "creditor" also encompasses the individuals who participated in the decision to extend or not to extend credit. Id. at *18-20.

77. Defendant Farm Credit East is a "creditor" as defined by the ECOA.

78. Each of the individual Defendants are "creditors" as defined by the ECOA, because each individual Defendant participated in one or more of the decisions to deny the Plaintiff credit.

79. Plaintiff is a member of a protected class, because he is over seventy (70) years old.

80. At the time that the Plaintiff applied for credit he was over seventy (70) years old.

81. The Plaintiff applied for credit four (4) times from Defendant Farm Credit East.

82. More specifically, in or about February of 2017, the Plaintiff applied to Defendant Farm Credit East for a mortgage/refinance.

83. In or about November of 2017, after his application for a mortgage/refinance was denied, the Plaintiff met with Defendant Wiles who agreed to reconsider the application as a refinance.

84. In or about January of 2017, after his request for refinancing was denied, the Plaintiff applied to Defendant Farm Credit East for a country home loan.

85. In April of 2018, the Plaintiff re-applied and/or further supplemented his application for a country home loan with Defendant Farm Credit East.

86. In each and every instance, the Plaintiff was qualified for credit. The Plaintiff provided his multi-million dollar estimated net worth and proof of funds in his bank account. He also had an extensive history as a borrower with other creditors for over fifteen (15) years on numerous multi-million dollar mortgages, never missed a payment (in fact his payments were ACH direct debts), and had a perfect credit score.

87. Despite the Plaintiff's qualifications, the Defendants denied each of his applications.

88. In each instance, the Defendants claimed the Plaintiff had insufficient income or

insufficient experience as a farmer and/or an inadequate business plan.

89. These "reasons" were just a pretext. The Plaintiff had shown proof of his income. The Defendants never asked about his farming experience. The Plaintiff also explained, in depth, what the funds would be used for.

90. Upon information and belief, the actual reason why the Defendants denied all four (4) of the Plaintiff's requests for credit was because of his advanced age.

91. This belief is based upon a meeting that the Plaintiff had with Defendant Wiles to review his income and experience with farming. The Plaintiff voluntarily presented proof of his 23.5 acre ground cover farm in Yorktown, to which Defendant Wiles stated, "Why didn't you tell me about this earlier?," the Plaintiff also told Defendant Wiles about his fifteen year payment history with no late payments, to which Defendant Wiles stated, "oh." Defendant also pointed to Defendant Wiles' paperwork to show him that Plaintiff already provided proof of funds.

92. During this meeting, which took place after the Plaintiff had been denied a mortgage, Defendant Wiles asked the Plaintiff questions such as, "How old are you?" "What if you die?" "Is the property in your name?"

93. Around or about the same time, Defendant Wiles contacted the Plaintiff's daughter and asked her if she was involved in the Property and what would happen in the event of "succession."

94. In each instance, the Plaintiff attempted to show that each denial was erroneous. However, the Defendants made it clear that no matter how many times the Plaintiff applied, Defendant Farm Credit East would not be extending financing to him.

95. Exemplifying the animus towards the Plaintiff, General Counsel for Defendant

Farm Credit East explicitly stated: We are respectfully declining any further requests to extend credit to Mr. Ciuffetelli with respect to the property located at 2822 River Road. See Exhibit "F."

96. The Plaintiff asked people he knew about their experiences with Defendant Farm Credit East.

97. The Plaintiff learned from one individual, Erik Kirk, that there was no place easier to acquire a loan from than Farm Credit East. This individual explained that he did not have "two pennies to rub together," but Farm Credit East lent him money. Mr. Kirk also told the Plaintiff that Defendant Farm Credit East would include depreciation as income. Another individual, Kenneth Balatto, obtained financing from Farm Credit East for his car wash/auto repair shop – which is odd considering Farm Credit East is for farming. Another individual, Tom DiChiaro, of the winery at St. George, in Yorktown, Route 6, obtained financing with his father co-signing.

98. The Plaintiff was the victim of disparate treatment.

99. In addition to disparate treatment, Defendants failed, within thirty (30) days, to notify the Plaintiff that his application was denied or required further supplementation. 12 C.F.R. 202.9.

100. As a result of the foregoing, the Plaintiff seeks actual damages in the amount of ten million dollars (\$10,000,000.00) or an amount to be determined at trial of this action, punitive damages in the amount of \$10,000.00 against each Defendant, and costs and attorney's fees, jointly and severally. See 15 U.S.C. 1691(e).

AS AND FOR A SECOND CLAIM

(AGE DISCRIMINATION UNDER EXECUTIVE LAW § 296-A)

101. Plaintiff repeats and reiterates the allegations set forth within paragraphs "1" through

"100" herein above, with the same force and effect as if fully set forth at length herein.

102. New York Executive Law § 296-A, is the State's equivalent of the ECOA.

103. New York Executive Law § 296-A, states that "[i]t shall be an unlawful discriminatory practice for any creditor or any officer, agent, or employee thereof: (a) In the case of applications for credit with respect to the purchase, acquisition . . . of any housing accommodation, land, or commercial space to discriminate against any such applicant because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age . . . of such applicant . . . in the granting, withholding, extending or renewing, or in the fixing of the rates, terms, or conditions of, any such credit." See NY Exec. Law § 296-A(1)(a).

104. The statute even more broadly states, "[i]t shall be an unlawful discriminatory practice for any creditor or any officer, agent, or employee thereof: (b) To discriminate in the granting, withholding, extending or renewing, or in the fixing of the rates, terms or conditions of, *any form of credit*, on the basis of race, creed, color, national origin, sexual orientation, gender identity or expression, military status, *age*, sex, marital status, disability, or familial status." See NY Exec. Law § 296-A(1)(b) (*emphasis added*).

105. Furthermore, the statute makes it an unlawful discriminatory practice to make an "inquiry which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, marital status, disability, or familial status. See NY Exec. Law § 296-A(1)(c).

106. Defendant Farm Credit East is a "creditor" subject to NY Exec. Law § 296-A.

107. Each of the individual Defendants are an "officer, agent, or employee thereof" subject to NY Exec. Law § 296-A.

108. Plaintiff is a member of a protected class, because he is over seventy (70) years old.

109. At the time that the Plaintiff applied for credit he was over seventy (70) years old.

110. The Plaintiff applied for credit four (4) times from Defendant Farm Credit East.

111. More specifically, in or about February of 2017, the Plaintiff applied to Defendant Farm Credit East for a mortgage/refinance.

112. In or about November of 2017, after his application for a mortgage/refinance was denied, the Plaintiff met with Defendant Wiles who agreed to reconsider the application as a refinance.

113. In or about January of 2017, after his request for refinancing was denied, the Plaintiff applied to Defendant Farm Credit East for a country home loan.

114. In April of 2018, the Plaintiff re-applied and/or further supplemented his application for a country home loan with Defendant Farm Credit East.

115. In each and every instance, the Plaintiff was qualified for credit. The Plaintiff provided his multi-million dollar estimated net worth and proof of funds in his bank account. He also had an extensive history as a borrower with other creditors for over fifteen (15) years on numerous multi-million dollar mortgages, never missed a payment (in fact his payments were ACH direct debts), and had a perfect credit score.

116. Despite the Plaintiff's qualifications, the Defendants denied each of his applications.

117. In each instance, the Defendants claimed the Plaintiff had insufficient income or insufficient experience as a farmer and/or an inadequate business plan.

118. These "reasons" were just a pretext. The Plaintiff had shown proof of his income.

The Defendants never asked about his farming experience. The Plaintiff also explained, in depth, what the funds would be used for.

119. Upon information and belief, the actual reason why the Defendants denied all four (4) of the Plaintiff's requests for credit was because of his advanced age and animus.

120. This belief is based upon a meeting that the Plaintiff had with Defendant Wiles to review his income and experience with farming.

121. During this meeting, which took place after the Plaintiff had been denied a mortgage, Defendant Wiles asked the Plaintiff questions such as, "How old are you?" "What if you die?" "Is the property in your name?"

122. Around or about the same time, Defendant Wiles contacted the Plaintiff's daughter and asked her if she was involved in the Property and what would happen in the event of "succession."

123. In each instance, the Plaintiff attempted to show that each denial was erroneous. However, the Defendants made it clear that no matter how many times the Plaintiff applied, Defendant Farm Credit East would not be extending financing to him.

124. Exemplifying the animus towards the Plaintiff, General Counsel for Defendant Farm Credit East explicitly stated: We are respectfully declining any further requests to extend credit to Mr. Ciuffetelli with respect to the property located at 2822 River Road. See Exhibit "F."

125. The Plaintiff asked people he knew about their experiences with Defendant Farm Credit East.

126. The Plaintiff learned from one individual, Erick Kirk, that there was no place easier to acquire a loan from than Farm Credit East. This individual explained that he did not have "two

pennies to rub together," but Farm Credit East lent him money. Mr. Kirk also told the Plaintiff that Defendant Farm Credit East would include depreciation as income. Another individual, Kenneth Ballato, obtained financing from Farm Credit East for his car wash/auto repair shop – which is odd considering Farm Credit East is for farming. Another individual, Tom DiChiaro, of the winery at St. George, in Yorktown, Route 6, obtained financing with his father co-signing.

127. The Plaintiff was the victim of disparate treatment.

128. In addition to disparate treatment, Defendants failed, within thirty (30) days, to notify the Plaintiff that his application was denied or required further supplementation.

129. For the same reasons set forth in Plaintiff's First Claim, pursuant to the ECOA, the Plaintiff also seeks, pursuant to NY Exec. Law § 296-A, actual damages in the amount of ten million dollars (\$10,000,000.00) or an amount to be determined at trial of this action, punitive damages in the amount of \$10,000.00 against each Defendant, and costs and attorney's fees, jointly and severally.

AS AND FOR A THIRD CLAIM

(DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT "FOIA," 5 U.S.C. §552)

130. Plaintiff repeats and reiterates the allegations set forth within paragraphs "1" through "129" herein above, with the same force and effect as if fully set forth at length herein.

131. Pursuant to 5 U.S.C. § 552, the term " 'agency' as defined in section 551(1) of this title [5 USCS § 551(1)] includes any executive department, military department, Government corporation, *Government controlled corporation*, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency . . ." See 5 U.S.C. § 552(e); see also Rocap v. Indiek, 176 U.S. App. D.C. 172,

539 F.2d 174, 175 (D.C. Cir., 1976)).

132. Upon information and belief, Defendant Farm Credit East is an entity within the Farm Credit System, disburses funds under the Federal Farm Loan Act, and is subject to the authority of, and within the jurisdiction of, the Farm Credit Administration. The Farm Credit Administration is an independent agency of the federal government of the United States.

133. Therefore, Defendant Farm Credit East is a Government controlled corporation subject to FOIA.

134. The Plaintiff, by and through his current counsel, sent Defendant Farm Credit East a Freedom of Information Act ("FOIA"). See Exhibit "G."

135. The Plaintiff sought true and complete copies of all records of Farm Credit East pertaining to the loans, loan applicants and properties described in the request, including his own application, and that of other applicants, including Mr. Eric Kirk, Mr. Kenneth Ballato, and Mr. DiChiaro, all of whom acquired loans from Defendant Farm Credit East while, upon information and belief, not meeting the requisite criteria that the Plaintiff had met.

136. Defendant Farm Credit East denied the Plaintiff's FOIA request, stating that it was not a federal agency subject to FOIA.

137. The denial, signed by Ms. Gfeller, General Counsel, who cc'd Defendant Wiles, specifically stated, see Exhibit "H:"

FCE is an instrumentality of the United States and governed by the regulations of the Farm Credit Administration ("FCA"); however, FCE is not a federal agency who may be the subject to a Freedom of Information Act request. In fact, the FCA Regulations at 12 CFR Section 618.8320 prohibit FCE from producing confidential borrower documents unless a court of competent jurisdiction issues a lawful order signed by a judge.

138. When the Plaintiff, by and through his current counsel, sent the FOIA request directly to the Farm Credit Administration ("FCA"), senior attorney Autumn R. Agans, Esq., responded, in relevant part: "After conducting a thorough search of Agency records, we have determined that FCA has no records responsive to your request. However, you may be able to obtain the requested records from Farm Credit East." See Exhibit "I."

139. When Plaintiff's counsel informed Ms. Agans of Farm Credit East's position, Ms. Agans refused to state whether or not Farm Credit East was subject to FOIA. See Exhibit "J."

140. As a result of the foregoing, the Plaintiff seeks a judgment, pursuant to 28 U.S.C. §2201, adjudging and declaring that Defendant Farm Credit East is an "agency" subject to FOIA, as well as, enjoining the agency from withholding agency records and to produce the records improperly withheld from the Plaintiff along with an award of reasonable attorney's fees, costs, and expenses.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests that the Court award Plaintiff the following relief:

AS AND FOR A FIRST CLAIM

(AGE DISCRIMINATION UNDER THE EQUAL CREDIT OPPORTUNITY ACT "ECOA", 15 U.S.C. § 1691, AGAINST ALL DEFENDANTS)

Under the First Claim, Plaintiff requests that this Court:

(a) Award the Plaintiff his actual damages in the amount of ten million dollars (\$10,000,000.00) or an amount to be determined at trial of this action,

(b) Award the Plaintiff punitive damages in the amount of \$10,000.00 against each Defendant;

(c) Award the Plaintiff costs and attorney's fees;

(d) All jointly, severally, and with applicable interest, and for such other and further relief as this court may deem just and proper.

AS AND FOR A SECOND CLAIM

(AGE DISCRIMINATION UNDER EXECUTIVE LAW § 296-A)

Under the Second Claim, Plaintiff requests that this Court:

(a) Award the Plaintiff his actual damages in the amount of ten million dollars (\$10,000,000.00) or an amount to be determined at trial of this action,

(b) Award the Plaintiff punitive damages in the amount of \$10,000.00 against each Defendant;

(c) Award the Plaintiff costs and attorney's fees;

(d) All jointly, severally, and with applicable interest, and for such other and further relief as this court may deem just and proper.

AS AND FOR A THIRD CLAIM

**(DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT "FOIA,"
5 U.S.C. §552)**

Under the Third Claim, Plaintiff requests that this Court:

(a) Adjudge and declare that Defendant Farm Credit East is an "agency" subject to FOIA;

(b) Enjoin the agency from withholding agency records and to produce the records improperly withheld from the Plaintiff;

(c) Award the Plaintiff his reasonable attorney's fees, costs, and expenses;

(d) All jointly, severally, and with applicable interest, and for such other and further relief as this court may deem just and proper.

Dated: Merrick, New York

July 10, 2019

Yours etc.,

Campanelli & Associates, P.C.

By: /s/Andrew J. Campanelli
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